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may receive evidence at the hearing even though the evidence would not be admissible in court under the rules of evidence used by the court.

(d) *Subpoenas.* (1) When it is reasonably necessary for the full presentation of a case, an administrative law judge or a member of the Appeals Council may, on his or her own initiative or at the request of a party, issue subpoenas for the appearance and testimony of witnesses and for the production of books, records, correspondence, papers, or other documents that are material to an issue at the hearing.

(2) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for the issuance of a subpoena with the administrative law judge or at one of our offices at least 5 days before the hearing date. The written request must give the names of the witnesses or documents to be produced; describe the address or location of the witnesses or documents with sufficient detail to find them; state the important facts that the witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.

(3) We will pay the cost of issuing the subpoena.

(4) We will pay subpoenaed witnesses the same fees and mileage they would receive if they had been subpoenaed by a Federal district court.

(e) *Witnesses at a hearing.* Witnesses may appear at a hearing in person or, when the conditions in §416.1436(c) exist, video teleconferencing. They shall testify under oath or affirmation, unless the administrative law judge finds an important reason to excuse them from taking an oath or affirmation. The administrative law judge may ask the witnesses any questions material to the issues and shall allow the parties or their designated representatives to do so.

(f) *Collateral estoppel—issues previously decided.* An issue at your hearing may be a fact that has already been decided in one of our previous determinations or decisions in a claim involving the same parties, but arising under a different title of the Act or under the Federal Coal Mine Health and Safety Act. If this happens, the administrative law judge will not consider the issue

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again, but will accept the factual finding made in the previous determination or decision unless there are reasons to believe that it was wrong.

[45 FR 52096, Aug. 5, 1980, as amended at 51 FR 307, Jan. 3, 1986; 68 FR 5221, Feb. 3, 2003; 75 FR 39161, July 8, 2010]

§416.1451 When a record of a hearing before an administrative law judge is made.

The administrative law judge shall make a complete record of the hearing proceedings. The record will be prepared as a typed copy of the proceedings if—

(a) The case is sent to the Appeals Council without a decision or with a recommended decision by the administrative law judge;

(b) You seek judicial review of your case by filing an action in a Federal district court within the stated time period, unless we request the court to remand the case; or

(c) An administrative law judge or the Appeals Council asks for a written record of the proceedings.

[45 FR 52096, Aug. 5, 1980, as amended at 51 FR 308, Jan. 3, 1986]

§416.1452 Consolidated hearings before an administrative law judge.

(a) *General.* (1) A consolidated hearing may be held if—

(i) You have requested a hearing to decide your eligibility for supplemental security income benefits and you have also requested a hearing to decide your rights under another law we administer; and

(ii) One or more of the issues to be considered at the hearing you requested are the same issues that are involved in another claim you have pending before us.

(2) If the administrative law judge decides to hold the hearing on both claims, he or she decides both claims, even if we have not yet made an initial or reconsidered determination on the other claim.

(b) *Record, evidence, and decision.* There will be a single record at a consolidated hearing. This means that the

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evidence introduced in one case becomes evidence in the other(s). The administrative law judge may make either a separate or consolidated decision.

[45 FR 52096, Aug. 5, 1980, as amended at 51 FR 308, Jan. 3, 1986]

§416.1453 The decision of an administrative law judge.

(a) *General.* The administrative law judge shall issue a written decision which gives the findings of fact and the reasons for the decision. The administrative law judge must base the decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. The administrative law judge shall mail a copy of the decision to all the parties at their last known address. The Appeals Council may also receive a copy of the decision.

(b) *Fully favorable oral decision entered into the record at the hearing.* The administrative law judge may enter a fully favorable oral decision based on the preponderance of the evidence into the record of the hearing proceedings. If the administrative law judge enters a fully favorable oral decision into the record of the hearing proceedings, the administrative law judge may issue a written decision that incorporates the oral decision by reference. The administrative law judge may use this procedure only in those categories of cases that we identify in advance. The administrative law judge may only use this procedure in those cases where the administrative law judge determines that no changes are required in the findings of fact or the reasons for the decision as stated at the hearing. If a fully favorable decision is entered into the record at the hearing, the administrative law judge will also include in the record, as an exhibit entered into the record at the hearing, a document that sets forth the key data, findings of fact, and narrative rationale for the decision. If the decision incorporates by reference the findings and the reasons stated in an oral decision at the hearing, the parties shall also be provided, upon written request, a record of the oral decision.

(c) *Time for the administrative law judge's decision.* (1) The administrative

law judge must issue the hearing decision no later than 90 days after the request for hearing is filed, unless—

(i) The matter to be decided is whether you are disabled; or

(ii) There is good cause for extending the time period because of unavoidable circumstances.

(2) Good cause for extending the time period may be found under the following circumstances:

(i) *Delay caused by you or by your representative's action.* The time period for decision in this instance may be extended by the total number of days of the delays. The delays include delays in submitting evidence, briefs, or other statements, postponements or adjournments made at your request, and any other delays caused by you or your representative.

(ii) *Other delays.* The time period for decision may be extended where delays occur through no fault of the Commissioner. In this instance, the decision will be issued as soon as practicable.

(d) *Recommended decision.* Although an administrative law judge will usually make a decision, the administrative law judge may send the case to the Appeals Council with a recommended decision based on a preponderance of the evidence when appropriate. The administrative law judge will mail a copy of the recommended decision to the parties at their last known addresses and send the recommended decision to the Appeals Council.

[45 FR 52096, Aug. 5, 1980, as amended at 51 FR 308, Jan. 3, 1986; 54 FR 37793, Sept. 13, 1989; 62 FR 38455, July 18, 1997; 69 FR 61597, Oct. 20, 2004; 73 FR 76945, Dec. 18, 2008; 75 FR 33169, June 11, 2010]

§416.1455 The effect of an administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party request a review of the decision by the Appeals Council within the stated time period, and the Appeals Council reviews your case;

(b) You or another party requests a review of the decision by the Appeals Council within the stated time period, the Appeals Council denies your request for review, and you seek judicial